

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PAUL HENRI MARIE HARLEMAN,

Petitioner,

v.

WARDEN, FDC SEATAC,

Respondent.

CASE NO. 2:24-cv-02176-TMC-GJL

ORDER GRANTING MOTION TO
STRIKE WITH LEAVE TO
AMEND

This federal habeas action filed pursuant to 28 U.S.C. § 2241 has been referred to United States Magistrate Judge Grady J. Leupold. Before the Court is Respondent's Motion to Strike a new claim raised for the first time in Petitioner's Response to the Return. Dkt. 14. Because Petitioner did not follow the proper procedures for raising additional grounds for habeas relief, the Motion to Strike is **GRANTED**. Nevertheless, if Petitioner still wishes to assert his new claim, he is granted leave to file an amended petition not later than **April 14, 2025**.

I. BACKGROUND

In his Petition filed on December 12, 2024, Petitioner raised a single ground for habeas relief stating in full: "Respondent refuses to apply earned FSA time credits." Dkt. 1 at 3. The

1 Petition did not challenge the calculation of Petitioner’s earned FSA time credits, nor did it
2 include a ground relating to Petitioner’s PATTERN score and risk assessment. *Id.*

3 Approximately two weeks after the Court directed service of the Petition, Petitioner filed
4 a Supplement to the Petition raising new grounds for relief, including improper calculation of his
5 PATTERN score and an erroneous risk assessment. Dkt. 5. Because Petitioner did not follow the
6 proper procedures for supplementing or amending his Petition, the Court struck the improperly
7 filed Supplement from the record. Dkt. 8. Petitioner was informed of the procedural rules raising
8 new grounds for relief and advised that “adherence to procedural rules is essential for the orderly
9 and fair resolution of this action.” *Id.* at 2.

10 In his Response to the Return, Petitioner claimed he was entitled to federal habeas relief
11 because his PATTERN score and October 2024 risk assessment were erroneous, arbitrary, and
12 violated provisions of the First Step Act and Bureau of Prisons’ policy. Dkt. 12 at 1–2. Because
13 the legal and factual basis of this claim was not raised in the Petition and Petitioner did not
14 adhere to the procedures for raising additional grounds for federal habeas relief, Respondent
15 moved to strike the new claim. Dkt. 14. Petitioner disagrees that the claim about his PATTERN
16 score and risk assessment constitute a new ground for relief and, instead, argues they are simply
17 a rebuttal to the position taken by Respondent in the Return. Dkt. 17.

18 II. DISCUSSION

19 Having reviewed the parties’ arguments and the relevant record, the Court concludes that
20 Petitioner’s claim about his PATTERN score and October 2024 risk assessment presents a new
21 ground for habeas relief and is not merely a rebuttal to arguments made in the Return.

22 A response to a habeas return “is not the proper pleading to raise additional grounds for
23 relief.” *Cacoperdo v. Demosthenes*, 37 F.3d 504, 507 (9th Cir. 1994). In order for a respondent
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1 to be properly advised of—and respond to—all grounds for habeas relief, a petitioner must
2 present any new claims in an amended petition or other form prescribed by the Court. *Id.*

3 As previously explained to Petitioner, the procedures for filing an amended petition are
4 set forth in Rule 15 of the Federal Rules of Civil Procedure. *See* Dkt. 8. Under Rule 15, a party
5 may amend their pleading once as a matter of right within 21 days of service of the pleading or,
6 if the pleading requires a responsive pleading, within 21 days of service of the responsive
7 pleading, whichever is earlier. Fed. R. Civ. P. 15(a)(1). After the time to amend as of right
8 expires, a party may seek leave of court or consent of the opposing party to file an amended
9 pleading. Fed. R. Civ. P. 15(a)(2).

10 Petitioner did not file an amended petition before the time to do so as of right expired, nor
11 did he seek leave of court or Respondent's consent to file an amended petition after that time.
12 As such, the new ground for habeas relief raised in Petitioner's Response to the Return is
13 procedurally improper and will not be considered. However, given Petitioner's *pro se* status, the
14 Court will allow Petitioner an opportunity to file an amended petition properly presenting his
15 new claim regarding his PATTERN score and October 2024 risk assessment. *See* Dkt. 12 at 1–2.

16 III. CONCLUSION

17 Accordingly, the Court **ORDERS** the following:

- 18 1. Respondent's Motion to Strike (Dkt. 14) is **GRANTED**;
- 19 2. The new ground for federal habeas relief improperly presented in
20 Petitioner's Response (Dkt. 12) to the Return is **STRICKEN**;
- 21 3. Petitioner **MAY** file an amended petition not later than **April 14, 2025**.
22 Petitioner is **ADVISED** that any amended petition will be a complete
23 substitute for his current Petition, and the Court **WILL SCREEN** the
24 amended petition for compliance with the Rules Governing § 2254 Cases in
United States District Courts **BEFORE** directing Respondent to file a
Return. If Petitioner **DOES NOT** file an amended petition by the stated
deadline, the Court will proceed with consideration of Respondent's Return

1 and **WILL ONLY** address the ground for habeas relief set forth in the
2 Petition.

3 Finally, the Clerk of Court is **DIRECTED** to renote the Return (Dkt. 9) for consideration
4 on **April 14, 2025**. The Clerk is also **DIRECTED** to send Petitioner a copy of the standard form
5 for filing § 2241 petitions along with a copy of this Order.

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7 Dated this 31st day of March, 2025.

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10 Grady J. Leupold
11 United States Magistrate Judge
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